



# Charities Act (Northern Ireland) 1964

## 1964 CHAPTER 33

### PART II

#### APPLICATION OF PROPERTY CY-PRÈS, IMPERFECT TRUSTS, ETC.

##### EXTENSION OF CY-PRÈS POWERS

#### **22 Occasions for applying property cy-près.**

- (1) Subject to subsection (2), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près shall be as follows:—
- (a) where the original purposes, in whole or in part—
    - (i) have been as far as may be fulfilled; or
    - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
  - (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
  - (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or
  - (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or
  - (e) where the original purposes, in whole or in part, have, since they were laid down—
    - (i) been adequately provided by other means; or

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- (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or
  - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.
- (2) Subsection (1) shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près, except in so far as those conditions require a failure of the original purposes.
- (3) In authorising property comprised in a charitable gift to be applied cy-près, the Court or the Ministry shall have power to alter—
- (a) the purposes for which the property given may be applied; and
  - (b) the provisions and conditions governing the application of the property for those purposes;
- so as to secure that the property is applied as beneficially as is possible, consistently with the spirit of the gift.
- (4) In ascertaining the spirit of a gift for the purpose of subsection (1) or (3) the Court or the Ministry may take into account the conduct, and any habits or actions, of the donor and any written or oral declarations made by him at any time in relation to the gift.
- (5) References in subsections (1) and (2) to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.
- (6) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.

### **23 Application cy-près of gifts of donors unknown or disclaiming.**

- (1) Property given for specific charitable purposes which fail shall be applicable cy-près as if given for charitable purposes generally, where it belongs—
- (a) to a donor who, after such advertisements and inquiries as are reasonable, cannot be identified or cannot be found; or
  - (b) to a donor who has executed a written disclaimer of his right to have the property returned.
- (2) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—
- (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
  - (b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.
- (3) The Court or the Ministry may direct that property not falling within subsection (2) shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified, where it appears to the Court or, as the case may be, the Ministry either—

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- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
  - (b) that it would be unreasonable, having regard to the nature, circumstances and amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.
- (4) Where property is applied cy-près by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made, but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (2) or (3)—
- (a) the scheme shall specify the total amount of that property; and
  - (b) the donor of any part of that amount shall be entitled if he makes a claim not later than six months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the trustees of the charity after that date in connection with claims relating to his gift; and
  - (c) the scheme may include directions as to the provision to be made for meeting any such claim.
- (5) For the purposes of this section, charitable purposes shall be taken to fail where any difficulty in applying property to those purposes makes that property or the part not applicable cy-près available to be returned to the donors.
- (6) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.
- (7) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act

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